

## EXPLANATORY MEMORANDUM TO

### The Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2013

2013 No. 439

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 Under various EU single market directives, and other EU Treaty rights, a firm that is authorised in one European Economic Area (EEA) state may establish a branch or provide services in another EEA state; this is commonly called ‘passporting’. The Financial Services and Markets Act 2000 (“FSMA 2000”) and the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (“the 2001 Regulations”) set out various procedural requirements in relation to passporting, including requirements in relation to the notices.

2.2 This instrument amends the 2001 Regulations so as to prescribe cases in which the Financial Conduct Authority (FCA) must give the Prudential Regulation Authority (PRA) a copy of a notice it receives in relation to an incoming EEA firm. For example, the FCA will receive all notifications for incoming EEA firms under the Markets in Financial Instruments Directive (MiFID). The regulations prescribe circumstances in which the PRA should be given notice of an incoming EEA firm, in line with the way the PRA will designate certain UK investment firms to be undertaking PRA-regulated activity.

2.3 The regulations also require the FCA and PRA to notify each other when an EEA firm qualifies for authorisation in the UK, so that they can monitor the firm.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Financial Services Act 2012 (“the 2012 Act”) makes various amendments to FSMA 2000. In particular, Schedule 4 to the 2012 Act amends Schedules 3 and 4 of FSMA in respect of passporting under the single market directives listed in Schedule 3 to FSMA 2000 and the exercise of EU Treaty rights. Provisions inserted into FSMA 2000 by the 2012 Act enable the Treasury to make regulations which prescribe cases in which the

FCA must give a copy of a notice to the PRA, and which require the FCA and the PRA to notify each other when an EEA firm or Treaty firm qualify for authorisation under FSMA 2000.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The Financial Services Act 2012 provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:

- An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- A focused micro-prudential regulator, the PRA, to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- A focused conduct of business regulator, the FCA, to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

7.2 The Act imposes on the two new regulators a general requirement to coordinate the exercise of relevant functions. In addition, it requires the each regulator to consult the other or obtain the other's consent in some cases, and to notify the other of certain information.

## **8. Consultation outcome**

8.1 HM Treasury has consulted the FSA and the Bank of England in the preparation of this instrument. Due to the minor and technical nature of the instrument, and in line with common practice for secondary legislation that makes minor, technical and transitional provisions, there has been no formal public consultation.

## **9. Guidance**

9.1 None.

## **10. Impact**

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the 2012 Act.

10.2 The impact on the public sector is set out in the overarching impact assessment for the 2012 Act.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: [http://www.hm-treasury.gov.uk/d/condoc\\_fin\\_regulation\\_draft\\_secondary\\_leg.pdf](http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf).

## **11. Regulating small business**

11.1 This instrument will not impose additional burdens on small businesses.

## **12. Monitoring & review**

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

## **13. Contact**

Chris Goodspeed at HM Treasury Tel: 0207 270 5690 or email: [christopher.goodspeed@hmtreasury.gsi.gov.uk](mailto:christopher.goodspeed@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.